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14		
15		
16		TES DISTRICT COURT STRICT OF CALIFORNIA
17		NCISCO DIVISION
18	IN RE PACIFIC FERTILITY CENTER	
19	LITIGATION	Case No. 3:18-cv-01586-JSC
		PROPOSED SPECIAL VERDICT
20		FORM (
21		Pretrial Conference: April 29, 2021
22		Trial Date: May 20, 2021
23		The Henry has been also Cost Cost on
24		The Honorable Jacqueline Scott Corley
25		
26		
27		
28		

Section I. Strict Products Liability—Manufacturing Defect 1 (Affirmative Defense—Misuse or Modification)¹ 2 We answer the questions submitted to us as follows: 3 Did Chart Inc. manufacture the MVE 808 cryogenic tank? 1. 4 5 Yes No 6 If your answer to question 1 is yes, then answer question 2. If you answered no, stop here, answer 7 no further questions, and have the presiding juror sign and date this form. 8 Was the MVE 808 cryogenic tank misused or modified after it left Chart Inc.'s possession in a 2. 9 way that was so highly extraordinary that it was not reasonably foreseeable to Chart Inc.? 10 Yes No 11 12 If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4. 13 14 3. Was the misuse or modification the sole cause of the plaintiff's harm? 15 Yes No 16 17 If your answer to question 3 is no, then answer question 4. If you answered yes, stop here and answer no further questions in Section I, and go to Section II. 18 19 Did the Tank 4 contain a manufacturing defect when it left Chart's possession? 4. 20 ____ Yes ___ No 21 22 If your answer to question 4 is yes, then answer question 5. If you answered no, stop here and answer no further questions in Section I, and go to Section II. 23 5. Was the Tank 4's manufacturing defect a substantial factor in causing harm to the plaintiff? 24 25 ____ Yes ____ No 26 27 ¹ CACI VF-1200 and CACI VF-1201. Because product misue or modification is alleged as a complete defense (CACI 1245), questions 2 and 3 of CACI VF-1201 are included after question 1. See CACI VF-28 1200's "Directions for Use." PROPOSED SPECIAL VERDICT FORM

Case 3:18-cv-01586-JSC Document 759-5 Filed 04/15/21 Page 3 of 10 1 If your answer to question 5 is yes, then answer question 6. If you answered no, stop here and answer no further questions in Section I, and go to Section II. 2 3 6. Was PFC negligent? 4 ____ Yes ____ No 5 6 If your answer to question 6 is yes, then answer question 7. If you answered no, insert the number zero next to PFC's name in question 8. 7 8 7. Was PFC's negligence a substantial factor in causing plaintiff's harm? 9 ____ Yes ____ No 10 11 If your answer to question 7 is yes, then answer question 8. If you answered no, insert the number zero next to PFC's name in question 8. 12 8. What percentage of responsibility for plaintiff's harm do you assign to: 13 14 PFC: % 15 Chart: 16 % 17 TOTAL 100% 18 19 Procede to Section II. 20 21 22 23 24

25

26

27

28

Section II. Strict Products Liability—Design Defect 1 (Affirmative Defense—Misuse or Modification)² 2 We answer the questions submitted to us as follows: 3 Did Chart manufacture the Tank 4, the MVE 808 cryogenic tank? 1. 4 5 Yes No 6 If your answer to question 1 is yes, then answer question 2. If you answered no, stop here and 7 answer no further questions in Section II, and go to Section III. 8 2. Was the Tank 4 misused or modified after it left Chart's possession in a way that was so highly 9 extraordinary that it was not reasonably foreseeable to Chart? 10 Yes No 11 12 If your answer to question 2 is yes, then answer question 3. If you answered no, skip question 3 and answer question 4. 13 14 3. Was the misuse or modification the sole cause of the plaintiff's harm? 15 Yes No 16 17 If your answer to question 3 is no, then answer question 4. If you answered yes, stop here and answer no further questions in Section II, and go to Section III. 18 19 Is the product, Tank 4, one about which an ordinary consumer can form reasonable minimum 4. safety expectations? 20 21 Yes No 22 If your answer to question 4 is yes, answer question 5. If your answer is no, skip question 5 and 23 answer question 6. 24 Did Tank 4 fail to perform as safely as an ordinary consumer would have expected when used or 5. 25 26 ² CACI VF-1201 and CACI VF-1200. Because the negligence of PFC is at issue, questions 7 through 11 of CACI VF-1200 are added at the end. See CACI VF-1201 at "Directions for Use." Question 6 is 27 based on CACI 1244 as permitted under Johnson v. Honeywell Internat. Inc., 179 Cal. App. 4th 549, 28 558 n. 4. (2009).

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1		misused in an intended or reasonably foreseeable way? ³
2		Yes No
3		
4		If your answer to question 5 is yes, answer question 6. If your answer is no, skip question 6 and answer question 7.
5		
6	6.	At the time of the plaintiff's injury, did PFC and its employees and agents because of their particular position, training, experience, knowledge, or skill, know or should they have known about the harm or danger caused by the MVE 808 cryogenic tank with the TEC 3000 electronic
7		
8		controller?
9		
10		Yes No
11		Regardless of your answer to question 6, answer question 7.
12		
13	7. Did the benefits of Tank 4's design outweigh the risks of the design?	
14		
15	Yes	Yes No
16 If you are wared no to question 6 and yes to question	If you answered no to question 6 and yes to question 7, stop here and answer no further questions	
17		in Section II, and go to Section III.
18		
19	8.	Was Tank 4's design a substantial factor in causing harm to the plaintiff?
20		Yes No
21		105110
22		If your answer to question 8 is yes, then answer question 9. If you answered no, stop here and
23	answer no further questions in Section II, and go to Section III.	answer no further questions in Section II, and go to Section III.
24	4	
25	9.	Was PFC negligent?
26		Yes No
27		
28		
	³ Char	rt objects to this instruction and maintains that the proof will not warrant its submission to the jury. Δ

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1	If your answer to question 9 is yes, then answer question 10. If you answered no, insert the number zero next to PFC's name in question 11.)e
2	10 Was DEC's madisance a substantial factor in consine plaintiff's house?	
3	10. Was PFC's negligence a substantial factor in causing plaintiff's harm?	
4	Yes No	
5		
6	If your answer to question 10 is yes, then answer question 11. If you answered no, insert the number zero next to PFC's name in question 11.	
7	11. What percentage of responsibility for plaintiff's harm do you assign to:	
8		
9	PFC:	
10	%	
11	Chart:	
12	%	
13	TOTAL 100%	
14	Procede to Section III.	
15		
16		
17	Section III. Negligent Failure to Recall or Retrofit ⁴	
18	1. Did Chart know or should it reasonably have known that Tank 4's TEC 3000 electronic	
19	controller was dangerous or was likely to be dangerous when used in a reasonably foreseeable manner?	
20	Yes No	
21	105100	
22	If your answer to question 1 is yes, then answer question 2. If you answered no, stop here and	
23	answer no further questions in Section III, and go to Section IV.	
24	2. Did Chart become aware of this defect after the controller was sold?	
25	Yes No	
26		
27	If your answer to question 2 is yes, then answer question 3. If you answered no, stop here and answer no further questions in Section III, and go to Section IV.	
28	⁴ Based on CACI 1223 and modeled after CACI VF-1205 (Neligent Failure to Warn) and CACI VF-1200/1201 including the instructions on PFC's negligence.	
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1		
2	3.	Did Chart fail to recall or retrofit the controller?
3		Yes No
4		If your answer to question 3 is yes, then answer question 4. If you answered no, stop here and
5		answer no further questions in Section III, and go to Section IV.
6 7	4.	Would a reasonable manufacturer under the same or similar circumstances have recalled or retrofitted the tank's controller?
8		Yes No
9		If your answer to question 4 is yes, then answer question 5. If you answered no, stop here and
10		answer no further questions in Section III, and go to Section IV.
11	5.	Was Chart's failure to recall or retrofit the tank's controller a substantial factor in causing harm
12		to plaintiff?
13		Yes No
14		If your answer to question 5 is yes, then answer question 6. If you answered no, stop here and
15		answer no further questions in Section III, and go to Section IV.
16	6.	Was PFC negligent?
17		Yes No
18		
19		If your answer to question 6 is yes, then answer question 7. If you answered no, insert the number
20		zero next to PFC's name in question 8.
21	7.	Was PFC's negligence a substantial factor in causing plaintiff's harm?
22		Yes No
23		
24		If your answer to question 7 is yes, then answer question 8. If you answered no, insert the number zero next to PFC's name in question 8.
25		number zero next to PFC's name in question 8.
26	8.	What percentage of responsibility for plaintiff's harm do you assign to:
27		PFC:
28		%
		6

1	Chart:
2	%
3	TOTAL 100%
4	Procede to Section IV.
5	
6	Section IV. Compensatory Damages ⁵
7	What are damages?
8	1. Economic loss: Enter the amount below if you find that Chart is liable to plaintiff under
9	the theories of Section I—Strict Liability (Manfufacturing Defect); Section II—Strict Liability (Design
10	Defect); or Section III—Negligence (Failure to Recall or Retrofit).
11	The reasonable cost to replace her nine eggs: \$
12	
13	Past medical expenses incurred obtaining the nine eggs: \$
14	2. Noneconomic loss: Enter the amount below if you find that Chart is liable to plaintiff
15	under the theories of Section I—Strict Liability (Manfufacturing Defect) or Section II—Strict Liability
16	(Design Defect).
17	Pain, suffering, and emotional distress: \$
18	
19	
20 21	TOTAL \$
$\begin{bmatrix} 21 \\ 22 \end{bmatrix}$	Procede to Section V.
23	
24	Section V. Punitive Damages ⁶
2 4 25	1. Did Chart's failure to recall or retrofit Tank 4's controller constitute malice, oppression, or fraud?
26	
27	⁵ CACI VF-3920 Damages on Multiple Legal Theories; see also CACI 3903L.
28	⁶ CACI VF-3902 through 3904. Chart objects to these instructions and maintains that the proof will not warrant their submission to the jury.
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1	Yes No
2	If you answered yes, then answer question 10. If you answered no, stop here, answer no further
3	questions, and have the presiding juror sign and date this form.
4	2. Was the conduct constituting malice, oppression, or fraud committed by one or more officers,
5	directors, or managing agents of Chart acting on behalf of Chart?
6	YesNo
7	Proceed to the next question.
8	3. Did an agent or employee of Chart engage in the conduct with malice, oppression, or fraud?
10	Yes No
11	
12	If you answered yes, then answer question 4. If you answered no, stop here, answer no further questions, and have the presiding juror sign and date this form.
13	
14	4. Did one or more officers, directors, or managing agents of Chart authorize this conduct?
15	Yes No
16	Proceed to the next question.
17	
18	5. Did one or more officers, directors, or managing agents of Chart know of this conduct and adopt or approve it after it occurred?
19	Yes No
20	
21	Signed:
22	Presiding Juror
23	Dated:
24	Dated.
25	
26	After this verdict form has been signed, notify the [clerk/bailiff/court attendant] that you are ready to
27	present your verdict in the courtroom.
28	
	PROPOSED SPECIAL VERDICT FORM

1	
1	
2 3	Dated: April 15, 2021 By: <u>John J. Duffy</u> Marc G. Cowden (SB No. 169391)
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15	Counsel for Defendant Chart, Inc.
16	
17	
18	
19	<u>FILER'S ATTESTATION</u>
20	Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, attest that concurrence in the
21	filing of this document has been obtained.
22	Dated: April 15, 2021
23	
24	
25	
26	
27	
28	
	PROPOSED SPECIAL VERDICT FORM